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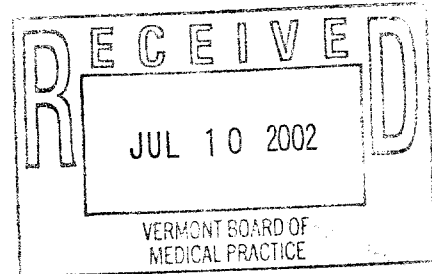
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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

July 8, 2002

Gloria J. Hurd, Executive Director
Vermont Board of Medical Practice
109 State Street
Montpelier, Vermont 05609-1106



In re: Robert S. Baska, M.D.
MPS 38-0501; MPS 39-0501; MPS 60-0801

Dear Director Hurd:

Enclosed please find for filing with the Board the State's Exceptions to Proposed Hearing Committee Report. Would you kindly provide copies of the State's exceptions to those members of the Board who should receive them and to Mr. Cykon? The State requests oral argument only in the event that Respondent seeks oral argument.

Please contact me on 828-5620 should you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James S. Arisman".

JAMES S. ARISMAN
Assistant Attorney General

Enclosure

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Robert S. Baska, M.D.

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Docket Nos.: MPS 38-0501
MPS 39-0501; MPS 60-0801

STATE'S EXCEPTIONS TO PROPOSED HEARING COMMITTEE REPORT

The State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, submits the following statement of exceptions and/or suggested revisions as to the proposed Hearing Committee Report of July 3, 2002 in the above-referenced matters.

Finding 22 (Page 4); Conclusion of Law 4 (Page 19)

1. The proposed finding of fact, inter alia, states that the State's evidence did not establish that "an episode of sexual intercourse between Respondent and Patient A occurred while the patient was a hospital in-patient under Respondent's care." The State respectfully disagrees with this finding. Patient A testified credibly as to the event. She was cross-examined on this point. Her general credibility as a witness was not impeached during the hearing. Respondent denied the act. However, the State's evidence repeatedly demonstrated Respondent's lack of credibility on important factual matters.

2. A finding that the State failed to produce a preponderance of evidence regarding the act in the hospital room arguably indicates that the Hearing Committee does not credit the testimony of Patient A on this point. Respectfully, the State regards Patient A's testimony as credible and reliable and urges the Hearing Committee to revise Finding 22

accordingly and to revise Conclusion of Law 4 consistent with this to determine that Respondent violated the Bill of Rights for Hospital Patients, 18 V.S.A. § 1852.

Conclusion of Law: Count 2 (Page 18)

3. The State suggests that for clarity the language of the conclusion be revised by inserting the words "Patient A's" following the word "of" in the first line and by deleting the word "the" following "of" in the first line.

Conclusion of Law: Count 6 (Page 19)

4. The proposed Hearing Committee report interprets 3 V.S.A. § 129a(a)(11) as including "only those behaviors which result in financial gain for the physician by exploitation of the person/patient." The State respectfully disagrees with this narrow interpretation. Subsection 11 is written in alternative language. The words "for the financial gain of the practitioner or a third party" modify only the second half of the subsection, *i.e.* the language addressing the subject of "promoting the sale of services or goods" following the word "or".

5. Logically, the language of Subsection 11 is intended to proscribe three different forms of conducts: (1) exercising undue influence upon a patient; (2) taking improper advantage of a patient; or (3) "promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner". If the "financial gain" language modified the entire subsection, then unduly influencing a patient or taking improper advantage of a patient would not be unprofessional conduct if it were not for financial gain. The State submits that this is not the interpretation or result intended by the legislature.

6. The State's evidence established that Respondent Baska as a physician unduly influenced Patient A and took improper advantage of her for his own sexual and emotional satisfaction. The State urges that the conclusion of law as to Count 6 be revised to reflect a

violation of 3 V.S.A. § 129a(a)(11) by Respondent. That he was not motivated by financial objectives does not legally excuse his conduct.

Conclusion of Law: Count 8 (Pages 19 and 20)

7. The State suggests that for clarity the language of the conclusion be revised by inserting the words “as to the care of Patient E” following the word “evidence” in the first line.

Conclusion of Law: Count 9 (Page 20)

8. The State respectfully disagrees with this conclusion of law. Patient B testified credibly regarding the inappropriate statements that Respondent made to her. His statements were unsolicited, hurtful, and off-putting. The State respectfully urges that the Hearing Committee report be revised to conclude that such remarks to a patient have no place in the field of medicine and demonstrate unfitness to practice medicine. Such remarks are more than merely “boorish”. They are harmful to patient care and continuity of patient care. To the extent that such remarks are the product of “social naiveté”, they reflect Respondent’s unfitness to interact with and treat patients and are not a burden that should be borne by patients. The State urges that this conclusion of law be revised to reflect a violation of 26 V.S.A. § 1354(7).

Conclusion of Law: Count 11 (Page 20)

9. This conclusion of law by the hearing panel addresses only Respondent’s alleged “indifference to Patient B’s outcome and discomfort following surgery”. In fact, Count 11 pertains to the allegations set out in Paragraph 18 of the State’s Specification of Charges which include (1) indifference to the patient; (2) crude and demeaning remarks to the patient on one occasion; and (3) inappropriate remarks to her on another occasion. The State presented evidence that established conduct by Respondent that failed to provide to Patient B considerate and respectful care and that also failed to recognize her personal dignity. As such

the State submits that it has proven that Respondent failed to comply with the Patients' Bill of Rights, 18 V.S.A. § 1852, and thereby engaged in unprofessional conduct. The State urges that the conclusion of law as to Count 11 be revised to reflect violation of 18 V.S.A. § 1852, 26 V.S.A. § 1354(24), and 3 V.S.A. § 129a(a)(11) by Respondent.

Conclusion of Law: Count 12 (Page 20)

10. The State respectfully disagrees with this conclusion of law. Juliet Boyce testified credibly regarding the inappropriate statements that Respondent made to her and his related conduct. His crude statements were wholly unsolicited by Mrs. Boyce and frightened her. The State respectfully urges that the Hearing Committee report be revised to conclude that such remarks and conduct directed to a patient have no place in the field of medicine and demonstrate unfitness to practice medicine. Indeed, such remarks are crude and uncalled for and are harmful to patient care and continuity of patient care. Such remarks and conduct reflect Respondent's unfitness to interact with and treat patients. The State urges that this conclusion of law be revised to reflect a violation of 26 V.S.A. § 1354(7).

Conclusion of Law: Count 13 (Page 20)

11. The State submits that the Hearing Committee's findings regarding Respondent's conduct toward patient Juliet Boyce, findings 48 through 52, establish both unprofessional conduct and dishonorable conduct. The State urges that the conclusion of law as to Count 13 be reconsidered in light of these findings which make out conduct going beyond mere boorishness or failed humor. The State urges that a violation of 26 V.S.A. § 1398 be determined from the evidence.

Conclusion of Law: Count 22 (Page 22)

12. The Hearing Committee's findings regarding Respondent's threats to kill Warren West, the Copley Hospital administrator, findings 76 through 80, are evidence of

conduct that demonstrates unfitness to practice medicine. Respondent's statements were frightening, made seriously, and repeated by him. Such conduct demonstrates unfitness to practice medicine because it is egregious and undermines the good order, discipline, and teamwork that are required in a hospital setting. The State urges that the conclusion of law as to Count 22 be reconsidered in light of the findings made by the Hearing Committee regarding the threats by Respondent and that a violation of 26 V.S.A. § 1354(7) be determined from the evidence.

Conclusion of Law: Count 26 (Page 22)

13. The Hearing Committee's conclusion of law does not note that the State's evidence regarding the care rendered by Respondent to Patients A through G established in each case at least one simple failure to meet the prevailing standard of care. Thus, the State established at a minimum seven instances, i.e., "repeated occasions" when Respondent deviated from the required standard of care as to these patients.

14. The State urges that the conclusion expressly refer to its findings regarding Patients A, B, C, D, and E and that the Hearing Committee report also enter additional findings of fact regarding the substandard care rendered to Patients F and G by Respondent. The State urges the Hearing Committee report refer to its findings regarding Patients A, B, C, D, E, F, and G in determining a violation of 26 V.S.A. § 1354(22) and 3 V.S.A. § 129a(a)(10). In so doing, the State also urges that the Hearing Committee's conclusion of law as to Count 26 expressly refer to its findings regarding the "disruptive conduct" of Respondent, i.e., conduct which violates the standard of care and constitutes misconduct on his part.

Conclusion of Law: Count 27 (Page 23)

15. The Hearing Committee's conclusion of law does not refer to the State's evidence regarding the care rendered by Respondent to Patients A, D, E, and G. The State

submits that in each of these cases (and those of Patients B and C) that the evidence established a gross failure by Respondent to meet the prevailing standard of care. Thus, in total, the State established six instances when Respondent grossly deviated from the required standard of care as to these patients. The State urges that in addition to its findings of fact regarding Patients A, B, C, D, and E that the Hearing Committee (1) make express findings of fact regarding the care rendered to Patient G (see also, discussion at Paragraph 13, above); and (2) expressly refer to and conclude that Respondent's care of Patients A, B, C, D, E, and G grossly failed to meet the appropriate standard of care for each. Thus, in sum, the State asks that the Hearing Committee enter a conclusion of law that in each of these six cases Respondent grossly failed to meet the appropriate standard of care in violation of 26 V.S.A. § 1354(22) and 3 V.S.A. § 129a(a)(10).

WHEREFORE, undersigned counsel respectfully urges that the proposed report of the Hearing Committee, as to the unprofessional conduct of Respondent Baska, be revised as set forth above.

Dated at Montpelier, Vermont this 8th day of July 2002.

STATE OF VERMONT

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ATTORNEY GENERAL

By: 
JAMES S. ARISMAN
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